

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5662 of 1992

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MOINKHAN BALLUKHAN PATHAN

Versus

STATE OF GUJARAT & 1 ANR

Appearance:

MR KETAN A DAVE for Petitioner

Ms. S.D.Talati, Asstt. GP for Respondent No. 1, 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 13/02/98

ORAL JUDGEMENT

The petitioner is the resident of the City of Ahmedabad. He claims that he alongwith his father and brothers was carrying on business of salt grinding mill, beetle leaves and radio and TV sets in two shops constructed on the margin land at Bapunagar. He complains that on 30th October, 1990, some communal agitation took place on account of Bandh call given by certain organization. In course of the said communal

agitation, certain miscreants attacked the shop owned by the petitioner and his family and damaged the goods. The petitioner and his family members had to flee from the spot and returned only after a month. On their return, they found that one of the shops was pulled down and a Ram Mandir was constructed upon the said land. The petitioner, therefore, complained to several authorities and demanded that the land be restored to him and he be compensated for the damages suffered by him. The authorities, however, failed to pay him adequate compensation and to restore the land to him. Feeling aggrieved, the petitioner has preferred this petition.

2. Learned advocate Mr. Dave has appeared for the petitioner and has submitted that it was the duty of the State Government to maintain the law and order. In the present case, the Government has utterly failed in maintaining the law and order in the City of Ahmedabad which has resulted into damage to the property of the petitioner. On account of destruction of his shop during the communal agitations, the petitioner has lost his livelihood and thereby his life is also periled. He has submitted that it is a settled proposition of law that the life includes livelihood and any person can be deprived of his right to life by depriving him the means of livelihood. He has submitted that in the present case, it is not disputed that on account of failure of the law and order machinery, the petitioner lost his shop alongwith its goods. While awarding compensation to the petitioner, the respondent authorities have taken into consideration the loss of movable goods suffered by the petitioner. However, loss of shop or the premises has not been taken into consideration. Either the land should be restored to the petitioner or the petitioner should be adequately compensated for the loss of the shop and the land on which it was constructed. In support of his contentions, he has relied upon the judgment of the Madras High Court in the matter of R. Gandhi and others v. Union of India and Anr. (AIR 1989 Madras 205) and of Jammu and Kashmir High Court in the matter of M/s. Indarpuri General Stores and others v. Union of India and Anr. (AIR 1992 J. & K. 11).

3. The petition is contested by the respondents. Counter affidavit has been made by one Mr. S.V.Dabhi, City Mamlatdar. It is contended that the land on which the shops were constructed did not belong to the petitioner nor was he in lawful possession of the said land. The petitioner had encroached upon the land (which the petitioner admits is a margin land) and had illegally constructed the shops in question. Further, the land is

a private land and the question of restoration of the land to the petitioner would, therefore, not arise. It is contended that after assessing the damage caused to the petitioner's shop, sum of Rs.12,000/- was paid to the petitioner by way of compensation.

4. On perusal of the map annexure "A" to the petition, it appears that the shops in question were constructed on the margin land within the compound of the housing board colony. Obviously, the land could not have belonged to the petitioner nor could he have made any construction on the margin land.

5. It is undoubtedly true that right to life includes right to livelihood also. The petitioner a citizen of India has a right to life and also to carry on his business or profession in the City of Ahmedabad. It was also the duty of the respondent authorities to maintain law and order and in the event the petitioner suffered any loss to his person or property on account of failure of law and order machinery, the petitioner must be adequately compensated for the same. In the instant case, it is not disputed that the petitioner has been compensated for the loss of movable goods suffered by the petitioner. The question is, however, regarding the shop and the land on which it was constructed. As discussed hereinabove, the petitioner has encroached upon the land and has constructed the shops without the authority of law. The petitioner's occupation of the land and the construction of shop both were in contravention of law. In my view, therefore, the petitioner cannot claim compensation for the loss of the shop or the land on which the shop was constructed. The compensation for loss of immovable property can be claimed provided the property is lawfully occupied or constructed upon by the claimants. I am, therefore, of the view that the petitioner is not entitled to compensation for loss of shop or the land on which the shop was constructed. Neither the land is required to be restored to the petitioner nor the petitioner is required to be compensated for the loss of the property.

Petition is, therefore, dismissed. Rule is discharged. The petitioner shall bear the costs of this petition. Cost is quantified at Rs.1,500/- (Rupees fifteen hundred only).

Vyas